Information Commissioner's Office

Promoting public access to official information
and protecting your personal information

Managing poor performance – policy and procedure

1 Introduction

At the Information Commissioner's Office (ICO), we expect all employees to achieve a satisfactory level of performance and to carry out their duties to the standard required. It is important, therefore, that you understand your obligations and rights regarding this aspect of your employment.

This procedure will be followed if your performance is considered unsatisfactory.

We are committed to fostering and encouraging good employee performance and will deal sensitively, consistently and constructively with any employee whose standards fall to an unsatisfactory level. Our Competency Framework outlines the types of behaviours that we expect and the unhelpful behaviours that we discourage. We will use this as an indicator to help staff and managers understand the standards of performance that are expected.

This procedure applies to all ICO employees.

2 Policy aim

The aim of this procedure will be:

- to ensure that managers clearly identify to employees the standards of performance expected of them and to provide practical support, training and encouragement to bring about any necessary improvements;
- to provide guidance to managers about how to manage unsatisfactory performance in a fair and consistent way; and
- to outline the consequences and sanctions that will be used to address consistent unsatisfactory performance.

3 General guidance

When dealing with performance issues, managers need to make a clear distinction between a situation that may not be of the employee's own making – such as lack of training or a genuine lack of ability to undertake a particular job – and circumstances that may require disciplinary action. Where the problem is one of genuine incapability (poor performance), the procedures set out in this document should be followed.

The following situations are examples of issues that would normally be dealt with using this policy:

- failure to meet personal objectives and expectations / requirements of the post;
- low productivity or a lower output of work than is expected;
- failure to meet the required standards of work or performance;

- failure to achieve specified qualifications that are required to undertake the duties of the post;

- inadequate skills or knowledge; or

- inability to apply skills and knowledge in the workplace.

Issues relating to an employee's conduct should be dealt with under the ICO's disciplinary procedure, and the following situations are examples of such issues:

- negligence or carelessness in work practices; or

- failure to follow ICO policies and procedures, or failure to follow guidelines from relevant professional bodies, or health and safety guidelines, as appropriate.

4 General responsibilities

4.1 Managers

Managers will provide employees with a comprehensive induction programme regarding their work area, ensuring that:

- they understand the aims of their team/department;
- they are aware of the standards of performance expected of them; and
- their personal objectives and outcomes are agreed and monitored.

Managers must also make sure that every employee has an accurate and up-to-date job description. Where an employee's level of performance is considered to be unsatisfactory, their line manager should review the situation with the employee, identify the gap between their actual and required performance, and provide or arrange training and support as appropriate. The line manager will also set review dates and monitor the employee's progress accordingly.

4.2 Employees

You should ensure that your level of performance meets the required standard and that, where appropriate, you take advantage of any training or support identified as necessary for the satisfactory performance of your job. You should ensure that you bring to your line manager's attention any areas of work that you are finding difficult or need support with.

5 Human Resources Team

The Human Resources (HR) Team is responsible for ensuring that managers are provided with appropriate advice and guidance on the use of these procedures. When dealing with formal performance issues, managers should speak to the HR Team as soon as possible to ensure

that each case is dealt with correctly and that a fair and consistent approach is applied to all employees across the ICO.

The HR Team will provide advice and guidance as to the correct policy and procedure to follow if there is any doubt or uncertainty.

A member of the HR Team will be involved in all formal stages of the procedures set out in this document.

To ensure that all managers and trade union (TU) representatives operate the procedure in an appropriate and agreed manner, the HR Team will organise regular joint training sessions on how to handle poor performance issues.

6 Right to be accompanied

You have the right to be accompanied at any **formal** stages of the procedure by your trade union representative or full-time official of a recognised trade union, or by an ICO colleague.

You cannot be accompanied by anyone else (such as a spouse, partner, other family member or legal representative) apart from those people previously referred to.

7 Trade union representatives

Formal action against a TU representative can lead to a serious dispute if it is seen as an attack on their functions. Whilst normal capability standards apply to their performance as ICO employees, the relevant full-time official must be notified of any action that is proposed (including suspension). In any event, formal action must not be taken against a TU representative until the relevant full-time official has had an opportunity to be present at the formal meeting.

8 Performance

8.1 Reducing the risk of poor performance

You and your line manager should work together to minimise the risk of poor performance. It is particularly important that managers arrange a comprehensive induction programme for new employees when they start work. The opportunity should be taken to discuss the job description because this will ensure that each employee fully understands what is expected of them and will help structure their expectations of the job. Your manager should agree your personal objectives with you and review your progress regularly.

The ICO performance review process should be implemented after eight or nine months of you starting to work here.

8.2 **Managing poor performance**

Training, **supervision** and **encouragement** are essential factors if employees are to achieve a satisfactory level of performance. Managers should ensure that they discuss performance regularly with employees, either informally or formally, ensuring that issues are raised at the earliest opportunity. Inadequate performance, particularly during the first stages of a new job, should be identified as soon as possible so that appropriate action can be taken.

8.3 **Negligence or lack of ability**

When dealing with problems of poor performance and sub-standard work, we can often see a distinction between negligence and lack of ability. One-off errors, mistakes or missed deadlines would not normally trigger this policy. Concerns about poor or unsatisfactory performance would normally be the result of a series or pattern of problems.

- **Negligence**

  Negligence usually involves a measure of personal blame for failing to maintain a 'duty of care'; for example, from inattention or a lack of motivation, for which some form of disciplinary action would normally be appropriate. This would not apply to genuine and inadvertent errors or mistakes.

- **Lack of ability**

  Lack of ability is basically a lack of skill, aptitude or experience. For example, employees whose skills, whilst relevant at the outset of employment, have become outdated by new technology, re-organisation or changing patterns of work can seem to be incompetent in their approach to work. In such circumstances, it would not be appropriate for us to use our disciplinary procedure to deal with an 'under-performing' employee. Instead, we would provide a structured programme of training and support for the employee, along with regular appraisals of performance.

- **Competency**

  The ICO's Competency Framework outlines the types of behaviours that the organisation values and the types of behaviours that are unhelpful. The Competency Framework is linked to the **Values** of the ICO and provides detailed examples of expected standards of behaviour in areas such as personal effectiveness, leadership, change and innovation and professional / technical competence. We will proactively work with all staff to support their development and continued improvement in these areas to ensure that everyone meets the required standards of behaviour. In turn, you should take ownership and responsibility for your own personal development and

ensure you discuss any problem areas or development needs with your manager.

8.4 Dealing with poor performance

Before addressing any performance issue, managers should:

- be clear and realistic about the performance and output standards they expect;
- discuss these standards with the employee concerned; and
- identify any gaps between actual and expected performance that show the employee is not performing to the expected standard.

The first approach with any performance issue is to try to resolve the problem informally with the employee (see section 9 below). If the informal approach does not result in an improvement in the employee's performance, the line manager will need to follow the formal stages of the procedure.

9 Informal approach (outside the formal procedure)

Whenever possible, an informal approach should be the first step to helping, guiding or advising employees to improve their performance. Managers should encourage employees to bring any concerns to their attention.

The purpose of any informal meeting between you and your line manager is to:

- identify and examine any areas of concern;
- ensure that future expectations are clearly understood; and
- develop and agree an action plan leading to improvements, where appropriate.

Your line manager should ensure that your identified training needs are met as quickly as possible and that the action plan is reviewed and monitored within an agreed timescale. For more advice, contact the HR Team.

Your line manager should keep a note of the meeting (eg, a diary note). If you agree an action plan with your line manager containing appropriate training and support, this should be documented by the line manager and a copy kept for future reference. No record or details of the meeting should be kept on your personnel file.

10 Formal stages of the procedure

10.1 Preparing for a formal meeting

If your performance has not improved following the informal approach or if the performance issue is serious, the formal stages of the procedure will have to be followed.

A formal meeting will be arranged to discuss your performance and you should be notified, in writing, of the date and time at least five days beforehand. The letter should contain any supporting information relating to the issue of your performance, such as:

- your skills/knowledge shortfalls and the standards expected;
- specific evidence of your inability to deal with reasonable workloads or distinguish appropriate work priorities; or
- copies of any witness statements.

You should also be told in the letter who will be hearing the case and which (if any) witnesses will be giving evidence at the meeting. You have the right to be accompanied at the meeting by your TU representative or ICO colleague, and that a possible outcome of the meeting could be formal action.

You will also need to make available copies of any statements and/or written material that you intend to refer to, along with details of any witnesses who will give evidence on your behalf, no later than three days before the meeting.

10.2 Arranging formal meetings

To ensure that meetings do not have to be delayed or postponed at the last minute, your line manager should agree a mutually convenient time and date for the formal meeting with you and your TU representative or ICO colleague, in line with the time limits set out in this procedure.

If your TU representative or ICO colleague cannot attend on the date proposed, you can suggest an alternative time and date for the meeting, as long as it is reasonable and is within five working days of the original date of the meeting. For instance, it would not be reasonable to suggest a new date for the meeting when you knew that your line manager was going to be out of the office.

10.3 Conduct of formal meetings

Formal meetings will be conducted in line with the procedure outlined below:

- **Introductions**

The manager (Chair) hearing the case, together with a representative from the Human Resources Team, should introduce all present at the meeting, explain the purpose of the meeting (ie, to consider whether formal action is necessary), and explain how the meeting will be conducted.

- **Statement of concern**

  The chair should establish precisely what the concern is and invite your line manager to present their findings from the formal process, including all previously circulated statements and/or written material gathered during the investigation, and to call any witnesses.

- **Employee's right to reply**

  You should be given the opportunity to state your case and present evidence, including all previously circulated statements and/or written material, and call any witnesses.

- **Conduct**

  The meeting should be conducted courteously and fairly, with the emphasis being on establishing the facts. To this end, all parties should be free to ask questions politely and comment appropriately.

- **Summing up**

  After general questioning and discussion, both parties should be given the opportunity to summarise their main points. You will have the right to go last.

- **Adjournment**

  The Chair should, along with the Human Resources representative, consider their decision in private. If it is necessary to recall one or other of the parties to clear any points of uncertainty on evidence already given, both parties should be invited to return while these matters are cleared up.

- **The decision**

  Everyone involved will be recalled and the Chair will inform them of their decision.

11 Deciding on the formal action to be taken

11.1 General considerations

Decisions relating to whether or not formal action should be taken will be a matter of judgement for the Chair who has listened to the information

presented during the formal meeting. The Chair will, however, need to consider:

- the nature of your performance problems;
- your employment record;
- the fairness, consistency and merits of the information presented;
- the efforts you have made to improve your performance, either during the informal stage or since the previous warning was issued;
- the extent to which you may have contributed to the situation, eg, your reluctance to undertake training and so on;
- the requirements of employment legislation that we act reasonably, and treat each case fairly and on its own merits; and
- the existence of a current warning.

Note: Any warnings we have issued under our disciplinary procedure are not relevant to this procedure.

11.2 **First written warning**

If the informal process has failed to bring about an improvement in your performance, you should be given a first written warning.

A first written warning notifies you that your line manager views your performance (capability) problem as a serious matter and one that you and they must address together.

You should be advised, in writing, of the following:

- the reason for the warning;
- the details of the review period;
- the standard of performance you are expected to demonstrate;
- the training you will be provided with, if appropriate;
- details of any other assistance that you will be given, such as supervision;
- the consequences of you failing to meet specified improvements; and
- your right of appeal.

You should also be advised that the warning will remain in force for 12 months.

In exceptional circumstances where, for example, your skill or knowledge shortfall can only be met by attendance on a formal training course that will last for longer than 12 months, your line manager can extend the caution up to a maximum of 18 months.

Managers will also be able to extend warnings if you are absent from work during the period of the caution. The HR Team can provide advice and they will record the reasons for the extension to ensure fairness and consistency.

Continued training, supervision and support will be provided and further review periods will be agreed between you and your line manager to monitor your actual performance levels.

Within the 12-month period of the first written warning, your line manager will arrange formal reviews with you to assess your progress in meeting the required standard and to monitor whether the training/support in place is appropriate.

Your line manager may, at any point, refer the matter to a further formal performance meeting if they feel that you are not making sufficient progress. If you have reached the appropriate standard, your manager will inform you, in writing, that no further action will be taken.

11.3 **Final written warning**

Where a first written warning is in force and your performance has failed to improve, you should be given a final written warning.

A final written warning means that if your performance does not improve to an acceptable standard within the specified time limit, a further meeting will be held at which the termination of your contract of employment will be considered.

You will be advised, in writing, of the following:

- the reason for the warning;
- the details of the review period;
- the standard of performance expected from you;
- the training you will be provided with, if appropriate;
- details of any other assistance that you will receive, eg, supervision;
- the consequences of failing to meet specified improvements, which may be the termination of your contract of employment; and
- your right of appeal.

11.4 **Dismissal**

Where a final written warning is in force and your performance has failed to improve, despite encouragement and assistance, a further formal meeting will be arranged.

The decision taken at this meeting may be to terminate your contract of employment on the grounds of capability.

If we decide to dismiss you, you will be informed, in writing, of the following:

- the reason for the decision;
- the period of notice you are entitled to;
- the date from which your dismissal is effective; and
- your right of appeal.

11.5 **Other options**

At any stage in the formal procedure where the problem is connected with your performance, and it can be demonstrated that training/support is unlikely to improve, or has not improved, your performance, your line manager may consider one of the following options.

- Transfer you to another available post within the ICO. We will only consider this when it is clear that you are capable of meeting the required standards of this role and that it is in the best interests of the ICO.
- Demotion to another available post within the ICO.

If we propose to transfer you to another available post within the ICO that involves demotion, this must be with your full agreement – it cannot be imposed upon you. If you do not want to consider this proposal, formal proceedings should begin or continue.

If you accept a proposal that involves demotion, you are not entitled to any form of pay protection.

12 Right of appeal

12.1 **First / final written warning**

You may appeal against a first / final written warning, in writing, to your line manager within 10 days of receiving the letter confirming the written warning. As far as is reasonably possible, we will hear the appeal within

15 days of receiving your request. The appeal will be heard by the next level of manager.

12.2 **Dismissal**

You may appeal against dismissal, in writing, to the Director of Human Resources within 10 days of receiving of the letter confirming the dismissal.

The Human Resources Director will convene an appeal hearing. As far as is reasonably possible, we will hear the appeal within 30 days of receiving your request.

Appeals against dismissal will be heard by a member of the Executive Team and an appropriate HR representative.

13 Date of operation

This procedure has been agreed with trade union representatives and adopted by the ICO Executive Team with effect from 1 November 2006.

The procedure will be reviewed each year or, if required, following changes in legislation or significant developments in employment law practice.

Manager's checklist Appendix 1

Introduction		
Manager's name		
Department		
Employee's name		
Job title		
Start date		
Interviewed / recruited by		
Induction		
New starter checklist completed	By (name):	On (date):
Job description explained	By:	On:
Training plan identified	By:	On:
Training provided (see attached)	By:	On:
Induction checklist completed	By:	On:
Induction checklist signed off	By:	On:
Monthly review meetings completed	By:	On:
Three-month review meeting		
Meeting held	By (name):	On (date):
Notes of meeting agreed with employee	By:	On:
Were any issues identified? (If 'Yes', see attached sheet.)	Yes	No
Were any training needs identified?	Yes	No
Were training needs addressed?	Yes	No
Was an action plan produced?	Yes	No

Six-month review meeting with HR representative		
Meeting held	By (name):	On (date):
Notes of meeting agreed with employee	By:	On:
Were any issues identified?	Yes	No
Were any training needs identified?	Yes	No
Were they addressed?	Yes	No
Was an action plan produced?	Yes	No
Performance review meeting (conducted after nine months then each year after that)		
Meeting held	By (name):	On (date):
Notes of meeting agreed with employee	By:	On:
Were any training needs identified?	Yes	No
Were they addressed?	Yes	No
Was an action plan produced?	Yes	No
Future one-to-one meetings scheduled?	Yes	No
One-to-one / review meetings		
Have regular one-to-one meetings been held?	By (name):	On (date):
Were any issues identified?	Yes:	No:
Were they addressed?	Yes	No
Notes of meeting agreed with employee	Yes	No
Training / action plan agreed?	Yes	No
Training plan actioned / reviewed?	By:	On:
Was employee warned of consequences of not improving?	Yes	No

Note: Managers should keep adequate records of the above.

Appendix 2

Development area problem (eg, complaint handling)	Action	By	Deadline	Review period	Desired outcomes
Written communication Verbal communication Lack of technical knowledge / aptitude	Training course Shadowing Coaching Use a mentor	Line manager or training team / member of staff		Action plan	Capability

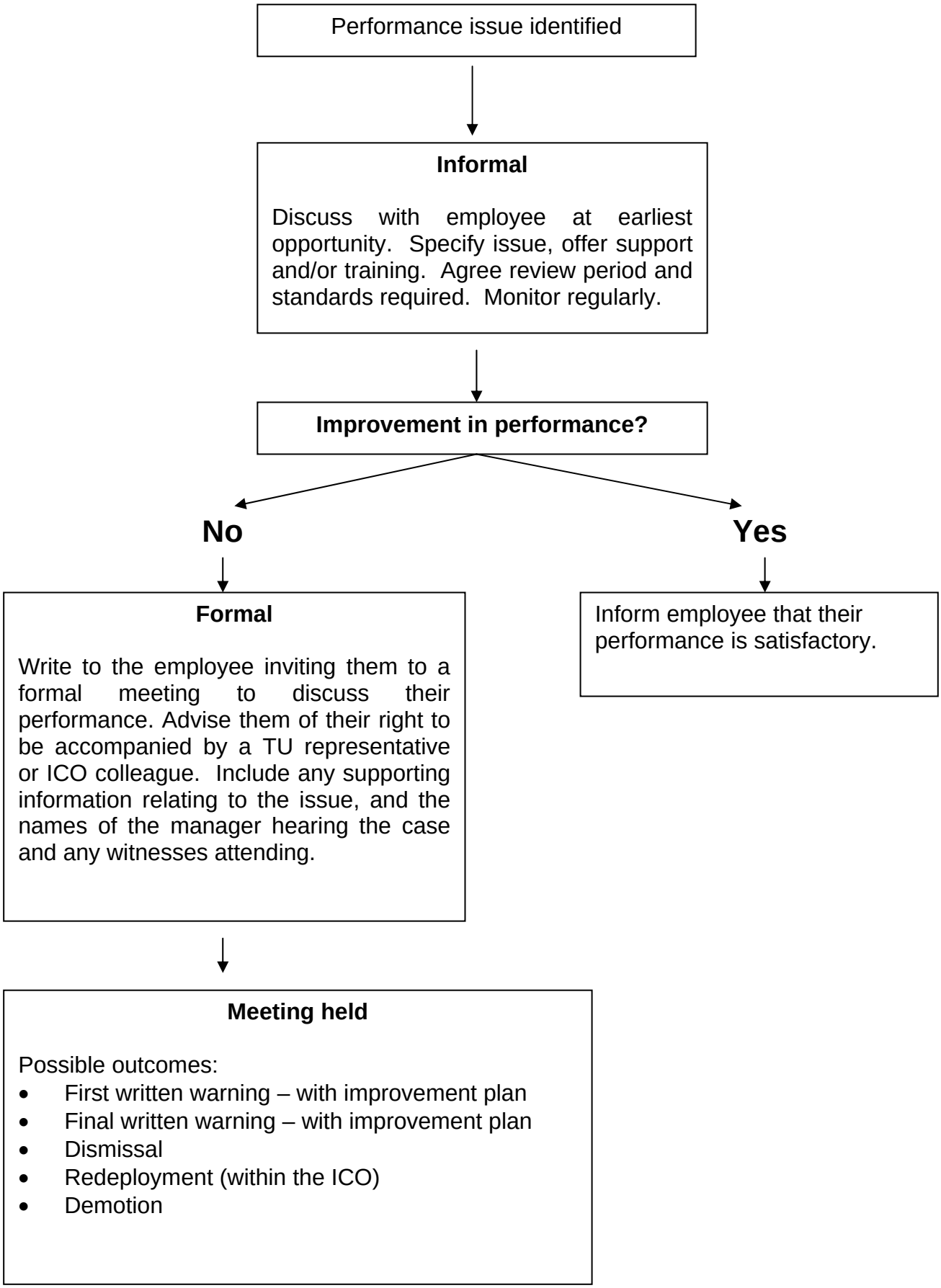
Signed: _____

Line manager

Signed: _____

Employee

Date: _____


Performance issue identified
Informal
Discuss with employee at earliest opportunity. Specify issue, offer support and/or training. Agree review period and standards required. Monitor regularly.
Improvement in performance?
No
Yes
Formal
Write to the employee inviting them to a formal meeting to discuss their performance. Advise them of their right to be accompanied by a TU representative or ICO colleague. Include any supporting information relating to the issue, and the names of the manager hearing the case and any witnesses attending.
Inform employee that their performance is satisfactory.
Meeting held
Possible outcomes:
• First written warning – with improvement plan
• Final written warning – with improvement plan
• Dismissal
• Redeployment (within the ICO)
• Demotion